

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOLENE MEREDITH,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

NO. CV-07-166-JPH

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

BEFORE THE COURT for resolution is the Report and Recommendation entered on April 25, 2008 (Ct. Rec. 25), recommending that Plaintiff's Motion for Summary Judgment (Ct. Rec. 19) be granted and Defendant's Motion for Summary Judgment (Ct. Rec. 22) be denied. On May 9, 2008, Defendant filed objections (Ct. Rec. 26).

Defendant's primary objection to the report and recommendation is that, although Plaintiff was assessed with moderate and marked mental impairment by more than one treating and examining mental health professional, the ALJ correctly found at step two of the sequential evaluation that Plaintiff's mental impairments have no more than a "de minimus" effect on her ability to work. (Ct. Rec. 26.) Defendant mischaracterizes the evidence to reach this conclusion: "Dr. Flanagan assessed no severe mental impairment in January 2004" (Ct. Rec. 26 at 18). Yet, as the magistrate judge's

1 report indicates, when Dr. Flanagan finished the "complete
2 psychological diagnostic interview" seven months after onset, she
3 found no evidence of malingering, Plaintiff's mood was mildly
4 depressed, and Plaintiff demonstrated both poor judgment and poor
5 concentration abilities. (Ct. Rec. 25 at 6.) As discussed by the
6 magistrate judge, Dr. Flanagan diagnosed anxiety disorder NOS and
7 occupational problems; she assessed a GAF of 51-60, indicating
8 moderate symptoms. (Ct. Rec. 25 at 6-7.)

9 An impairment may be found "not severe only if the evidence
10 establishes a slight abnormality that has no more than a minimal
11 effect on an individual's ability to work." *Webb v. Barnhart*, 433
12 F.3d 683, 686-687 (9th Cir. 2005) (citing *Smolen v. Chater*, 80 F.3d
13 1273, 1290 (9th Cir. 1996)); see *Yuckert v. Bowen*, 841 F.2d 303, 306
14 (9th Cir. 1988). Step two is a "de minimus screening device [used]
15 to dispose of groundless claims." *Smolen*, 80 F.3d at 1290. The
16 question on review is whether the ALJ had substantial evidence to
17 find that the medical evidence clearly established that the claimant
18 did not have a medically severe impairment or combination of
19 impairments. *Id.* The ALJ's step two conclusion is not clearly
20 established by medical evidence. Having reviewed the record, the
21 briefs of both parties, the objections, and the report and
22 recommendation, the cCurt adopts the magistrate judge's report and
23 recommendation in its entirety.

24 **IT IS HEREBY ORDERED** that the Report and Recommendation (Ct.
25 **Rec. 25**) to **grant** Plaintiff's Motion for Summary Judgment and **deny**
26 Defendant's Motion for Summary Judgment is **ADOPTED in its entirety**.
27 The Commissioner's decision to deny Plaintiff disability benefits is
28 **reversed**.

S/ Edward F. Shea
EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

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